

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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DONALD TURNER

Petitioner,

v.

TIMOTHY BRUNSMAN, Warden,

Respondent.  
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CASE NO. 1:09-CV-2770

OPINION & ORDER  
[Resolving Doc. No. [14](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Donald Turner moves this Court to reconsider its Order adopting Magistrate Judge George Limbert's unopposed Report and Recommendation and dismissing Turner's petition for habeas corpus. [\[Doc. 14\]](#) For the following reasons, this Court **GRANTS** the Petitioner's motion.

The Petitioner claims that he did not receive Magistrate Judge Limbert's Report and Recommendation until after this Court issued its Order and could not timely file his objections. [\[Doc. 14 at 1.\]](#) The March 30, 2011 Report and Recommendation concluded that the Court should dismiss the petition with prejudice. [\[Doc. 11 at 21.\]](#) The Petitioner's first, second, and third grounds for relief challenge the sufficiency of the indictment on state law grounds. The Magistrate Judge determined that these grounds do not present any claims cognizable under federal habeas corpus review. [\[Doc. 11 at 18\]](#) The Petitioner's fourth ground for relief is the alleged failure of the state court to impose the appropriate statutory sentence. The Magistrate Judge concluded that this claim

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was procedurally defaulted. [[Doc. 11 at 20](#)] On May 4, 2011, this Court adopted the entirety of the Magistrate Judge's Report and Recommendation and dismissed the petition. [[Doc. 12.](#)]

The Petitioner's claim that he did not receive Magistrate Judge Limbert's Report and Recommendation until after May 4, 2011 is not sufficient grounds to support a motion to reconsider. However, the Court construes Turner's motion to be a motion under [Federal Rule of Civil Procedure 6\(b\)](#) to extend the time within which he might file objections to the Report and Recommendation. Finding sufficient grounds, the Court **GRANTS** the petitioner's motion for an extension of time within which to file objections. Any such objections must be filed on or before June 30, 2011.

IT IS SO ORDERED.

Dated: June 14, 2011

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE